



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,385	03/01/2004	Johannes Burghaus	2887	5869

7590 04/14/2006

STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington, NY 11743

EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/790,385	Applicant(s) BURGHAUS, JOHANNES	
	Examiner Peter T. deVore	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawase.

The Kawase reference discloses an applicator capable of applying an oxidative hair dyeing mixture to human hair comprising two compartments 2a and 2b which contain the oxidizing agent hydrogen peroxide and an oxidative hair dye composition (see col. 1, lines 12-24) and are exchangeable (see col. 2, lines 25-54), and product dispensing openings 7a and 7b which are arranged to open next to each other into a product dispensing spot 8.

Claim 17 is rejected under 35 U.S.C. 102(e) as being anticipated by Bolton.

The Bolton reference discloses an applicator (Fig. 7) capable of applying an oxidative hair dyeing mixture to human hair comprising two compartments (first insertable exchangeable central cylindrical circular cross-section compartment within

wall 18 having stop 44 and capable of containing an oxidative hair dye composition, second concentric annular cross-section compartment between wall 1 and wall 18 and capable of containing an oxidizing agent), and liquid permeable inserts 25 and 43 within and protruding beyond product dispensing openings of the compartments which are arranged to open next to each other into a product dispensing spot (see Fig. 13), the liquid permeable inserts optionally made from fabric/felt (see para. 45, first two lines and para. 49, last two lines).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton.

The Bolton reference discloses an applicator as discussed supra, but remains silent as to the length the inserts protrude beyond the product dispensing openings. However, it would have been obvious for the inserts to protrude beyond the product dispensing openings by about 1 to 10 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 2336.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton in view of Hashimoto.

The Bolton reference discloses an applicator as discussed supra, but does not disclose foil covering the dispensing openings. However, Hashimoto discloses the use of foil to cover similar dispensing openings to prevent the product from drying out (see col. 1, lines 28-30). It would have been obvious to employ foil to cover the dispensing openings of the Bolton applicator in view of Hashimoto to prevent the product from drying out.

Claims 1-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton in view of Knight.

Regarding claims 1-4, 6-12, and 20, the Bolton reference discloses an applicator (Fig. 7) capable of applying an oxidative hair dyeing mixture to human hair comprising two compartments (first insertable exchangeable central cylindrical circular cross-section compartment within wall 18 having stop 44, second concentric annular cross-section compartment between wall 1 and wall 18), one of the compartments having a dye (see para.2, lines 3-4), any dye being inherently capable of being applied to hair whether or not it is absorbed by hair and is thus a "hair dye", and liquid permeable inserts 25 and 43 within and protruding beyond product dispensing openings of the compartments which are arranged to open next to each other into a product dispensing spot (see Fig. 13), the liquid permeable inserts optionally made from fabric/felt (see para. 45, first two lines and para. 49, last two lines), but does not disclose that the hair dye in one of the compositions is oxidative or that the other compartment contains an oxidizing agent. However, the Knight reference discloses a similar applicator including the use of an oxidizing agent in the formulation of one of the compartments and an

oxidant in the formulation of the other compartment (thus making it oxidant) so that the date/time the applicator is used can be determined (see col. 10, lines 25-50). It would have been obvious to modify the Bolton device such that the compartment with hair dye contains oxidant hair dye and the other compartment contains an oxidizing agent in view of Knight so that the date/time the applicator is used can be determined.

Regarding claim 5, although Bolton remains silent as to the length the inserts protrude beyond the product dispensing openings, it would have been obvious for the inserts to protrude beyond the product dispensing openings by about 1 to 10 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton in view of Knight as applied to claims 1, 10, and 11 supra, and further in view of Hashimoto.

The Bolton reference discloses an applicator as discussed supra, but does not disclose foil covering the dispensing openings. However, Hashimoto discloses the use of foil to cover similar dispensing openings to prevent the product from drying out (see col. 1, lines 28-30). It would have been obvious to employ foil to cover the dispensing openings of the modified Bolton applicator in view of Hashimoto to prevent the product from drying out.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawase in view of Hashimoto.

The Kawase reference discloses an applicator as discussed supra, but does not disclose foil covering the dispensing openings. However, Hashimoto discloses the use of foil to cover similar dispensing openings to prevent the product from drying out (see col. 1, lines 28-30). It would have been obvious to employ foil to cover the dispensing openings of the Kawase applicator in view of Hashimoto to prevent the product from drying out.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd *pd*


DAVID J. WALCZAK
PRIMARY EXAMINER
PRIMARY EXAMINER